



Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board
Lawrence E. Denney, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon D Woolf, State Controller
Sherri Ybarra, Superintendent of Public Instruction
Dustin T. Miller, Secretary to the Board

Be it remembered, that the following proceedings were had and done by the State Board of Land Commissioners of the State of Idaho, created by Section Seven (7) of Article Nine (IX) of the Constitution.

Final Minutes
State Board of Land Commissioners Regular Meeting
February 16, 2021

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, February 16, 2021 at the Idaho Department of Lands, Garnet Conference Rooms, Suite 103, Boise, Idaho, and via webinar. The meeting began at 9:00 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Governor Brad Little
Honorable Secretary of State Lawrence Denney
Honorable Attorney General Lawrence Wasden
Honorable State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Sherri Ybarra

For the record, the Governor's Stage 3 Stay Healthy Order, dated 2/2/2021, allowed for gatherings, including public meetings, of 50 persons or less in physical attendance; however, this meeting location was selected while the state was under a Stage 2 order; therefore the room capacity was limited to 10 persons or less. Governor Little was present at the physical meeting location with all other Board members joining via Zoom webinar.

1. Department Report – *Presented by Dustin Miller, Director*

Trust Land Revenue

- A. Timber Sales – January 2021
- B. Leases and Permits – January 2021

Discussion: In the Timber Sales report, Attorney General Wasden amusingly wondered if there was an uptick of interest by elk hunters in the Hello Elk timber sale. Director Miller replied that timber sales are named by the Department's foresters and speculated that this may be a spot where a lot of elk are seen. Controller Woolf referred to page 2 of the Leases and Permits report, noticing that several of the receipts are way ahead of expected targets, but several are lacking. Controller Woolf asked if it is timing, are receipts being paid off, or what is contributing to that. Director Miller responded that payments for various leases do come in a staggered fashion. Many come in early in the year and there is an uptick in those payments. A few are lagging, as the Department works to get a few leases issued. The Department is on track to meet its revenue

goal by the end of the fiscal year. Governor Little referenced the Monthly Lumber and Stumpage Price chart on page 3 of the Timber Sales report and suggested that salvage should be removed from it for the next Land Board meeting to see if the chart more accurately reflects prices. The Department has had record high prices this year and that should show up somewhere; if there is an inordinate amount of salvage that may explain it.

For the record, at approximately 9:11 a.m. Attorney General Wasden followed up on a statement from the recording secretary that some attendees of the Zoom webinar reported the audio was hard to hear. Attorney General Wasden asked for confirmation that members of the public were able to hear the meeting, in compliance with the Open Meeting Law. Mr. Scott Phillips checked the Zoom webinar feed and Facebook Live stream and verified that both had very good audio quality.

Status Updates

- C. Legislative Update
- D. Resource Protection and Assistance Report

Discussion: Governor Little pointed out the last graph of the Resource Protection and Assistance Report; the legend shows two blue lines, one for Capital Outlay and one for Year End Fund Total. Governor Little saw only one blue line, unless one was obscured by the black background; is there zero revenue coming in? Mr. Thomas replied it is very nearly zero revenue coming in currently. Given the three mines that are in the queue, Governor Little asked is there a date that the fund is going to be depleted and what plans should the Land Board put in place, particularly when the legislature is in town, to address that. Mr. Thomas said the Department does not have a date as to when that fund may be depleted since it is closely tied to the activity in Idaho which is pretty unpredictable at times. If the three large projects do not come online, which would be highly unlikely, the Department would reduce project activity to near nothing and moving forward may ask for some other funding source, first looking for other dedicated sources of revenue to fund the program; that would be the first option. If those do not work, then there may be a legislative ask, but that is for future and not anything the Department is planning on right now because staff knows historically that this activity is very cyclical. Controller Woolf mentioned the graph at the top of page 3 on the same report and for clarification inquired if the red and blue bars represent revenue or receipts coming in on the public trust program. Mr. Thomas replied that is correct. Controller Woolf asked if there is sufficient funds here, or is the Department over-recovering with the current cash balance? Controller Woolf noted in fiscal year 2016 there was no cash balance and in fiscal year 2021 it is approaching \$1.2 million. Mr. Thomas responded that it is a fine line. The Department increased inspections for the submerged land leases up north as activity continues to grow on Lake Coeur d'Alene and other lakes. Department staff wants to get out there and at least stay in pace with it. That is one of the reasons why the bureau started working with operations staff to get boots on the ground. The Department also brought an additional FTE online to help with these projects and thankfully the fund is matching the need right there. Mr. Thomas expects over the next several years to stay in that sweet spot. This increase in funding enables the Department to provide additional support and services to the public around the lakes up north.

2. Endowment Fund Investment Board Report – Presented by Chris Anton, EFIB Manager of Investments

- A. Manager's Report
- B. Investment Report

Discussion: Mr. Anton reported the portfolio was up most of the month of January but retreated modestly the last few days of the month. The fund ended down 0.5% for the month of January and up 17.6% fiscal year-to-date. Through the close of the markets on Friday [February 12] the fund continued to rally, up 23.7%. Mr. Anton commented it is pretty hard to believe the remarkable year the fund has had. Equity markets had an incredible rebound since the COVID-induced sell-off in March; it was not surprising to see some profit taking. Just to reiterate the rebound, March 23rd [2020] was the low and the overall portfolio on that day, for one day, dipped below \$2 billion. As of the close of the markets last Friday it was at \$3,000,112,000. That includes about \$175 million for the non-land grant/other state agency endowments, but the total portfolio was still over \$3.1 billion compared to just slightly below \$2 billion on March 23rd [2020]. Corporate profits for the fourth quarter have been very strong. Most of the companies, the vast majority, have announced earnings in excess of what was projected. However, valuations are starting to feel a little bit stretched given the run the markets have had. Vaccine deployment has had some challenges, and all are aware that there have been some potentially dangerous mutations of the virus. Overall, markets continue to be an environment where there is support both from fiscal and monetary policy, and as corporations are doing well markets continue to have this strong rebound. Mr. Anton stated reserve funds are well secured. All of the endowments are above target reserve levels. The Investment Board met on February 11th. The main decision made, based on the Governor's recommendation, is the Investment Board elected Tom Wilford as the new chairman; board members and staff are pleased to have Tom in that position. EFIB had its budget presentation on February 5th and as Director Miller indicated earlier, has its budget setting scheduled for March 9th.

Consent—Action Item(s)

3. Approval of Draft Minutes – January 19, 2021 Regular Meeting (Boise)

Consent Agenda Board Action: A motion was made by Attorney General Wasden that the Land Board adopt and approve the Consent Agenda. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Regular—Action Item(s)

4. Tidwell Idaho Foundation Appeal of Auction for Communication Site Lease No. M700084 and Auction Results – Presented by Steve Strack, Deputy Attorney General, Office of the Attorney General, and Dylan Lawrence, Principal, Varin Wardwell LLC

Recommendation: The Foundation's appeal should be rejected, and the results of the auction for Lease M700084 should be affirmed by the Land Board.

[Editor's note: Due to duration, the Discussion portion of this item is written in first-person format. This is not a verbatim transcript.]

Discussion:

Mr. Steve Strack: In 2018, the Department received an application to lease approximately a quarter-acre in what is commonly called the Buttercup parcel which is located in Blaine County just north of Hailey. The parcel itself has about 106.6 acres of land. In 2018, the Department received an application to lease a quarter acre as a cell tower site. The site is located at the southern tip of the parcel which is roughly triangular in shape. There is a map that accompanies our supplemental memorandum that kind of shows the location of the three things we're talking about here which is the parcel itself, the land that the Foundation applied to lease, and the location of the cell tower site. The application for the cell tower site was advertised in December 2019 and January 2020; the Department received three applications. One of those eventually dropped out and on December 3rd of last year, the Department held a virtual auction with the two remaining applicants. The winner of the auction was Newmax LLC which will pay a premium bid of \$15,500 and an annual rent of \$18,969 and that rent will go up 3% per year for the 20 year life of the lease and it will also go up if there are co-locators on the cell tower. On December 21st [2020], Tidwell Idaho Foundation filed a notice of appeal of the conflict auction, but they were not a bidder at the auction; that makes this appeal a little bit unusual and why we have to explain why exactly they're not entitled to pursue this appeal, in the Department's recommendation. The only issue before the Board to decide today, and it is a very limited issue, is whether or not to accept or reject the appeal. If the Board accepts the appeal, then the award of the cell tower lease would be stayed while the Board appoints the hearing officer or a subcommittee to hear the appeal on the merits. If you reject the appeal, then the award of the cell tower lease is confirmed, and it will go forward. In order to decide whether to accept or reject the appeal the Board has to make a threshold determination as to whether or not the Foundation has been aggrieved or injured by the award of the lease or by the conduct of the auction. I say that because the rules itself provide that only an aggrieved party can file an appeal of an auction result. So in order to be aggrieved or injured, a person has to be deprived of a legally protected right. Simply being unhappy with a cell tower lease in your neighborhood is not a sufficient basis for an appeal. If it was, then basically every cell tower lease the Department has issued in the last few years would be appealed. Here, the Foundation is alleging that it has a legally protected right in the conduct of the auction because it asserts that it was a conflict applicant. The issue of whether to accept or reject the appeal turns on the issue of whether or not the Foundation is a conflict applicant. In order to be a conflict applicant as defined in the rules, in this leasing rule 10.05, you have to be an applicant for the same parcel of state endowment trust land. At this initial stage – again the question is whether to accept or reject the appeal – the question is whether the Foundation has applied to lease the same parcel of endowment land that is the subject of this cell tower lease. If we were just to focus on the cell tower lease itself the answer is clearly no, because the Foundation did not apply for the cell tower lease itself, the one-quarter acre that we are talking about. Instead, the Foundation argues that it is a conflict applicant because it applied to lease a different portion of the Buttercup parcel and it intended to use that portion for a low-income housing development that would be supported by a solar farm which would supply power to the homes. To understand why there is no conflict, we have to go back to the Foundation's original application which was filed in June 2019. If you look at the map – it is part of the application, it is in the record, it's part of our

supplemental memorandum – you can see that the Foundation applied to lease 80 acres of land within the Buttercup parcel. That was the pink outline in this application; the Department helped them make the map. That 80 acres does not include the one-quarter acre that is the cell tower site. They are separated by a few hundred feet and by an Idaho Power transmission line that runs through the property pursuant to an easement with Idaho Power. There is no overlap between the land that the Foundation originally applied to lease and the cell tower site itself. The Foundation proposed to use that 80 acres for low-income housing development. They proposed to pay a rental rate initially of \$3,500 per year; they raised that a couple of months later to around \$25,000 a year, for a starting lease rate based on \$2,500 for every acre that they intended to develop. The Department has not really moved the application forward because it's been concerned about whether or not that proposed lease rate made a lot of sense given that this is a multi-million-dollar property. But for purposes of the appeal, we assume that the Foundation's application is still active. The Department has never expressly rejected it. So we treat them as an applicant for that property for purposes of this appeal. While the Foundation's application to lease that 80 acres was pending, the Department moved forward with the cell tower lease to auction. Again the initial application for the cell tower was filed in September 2018. The application was held up while the Department went through its lease review process that the Land Board ordered. The Foundation filed its application in June 2019. The cell tower was advertised as available for conflict applications in December 2019 and January 2020. There was an application deadline in the advertisements of January 10, 2020. Now because the Department knew the Foundation was interested in the Buttercup parcel itself, it provided actual notice of the application deadline to the Foundation. The Foundation initially indicated that it would like to bid on this site but eventually did not file an application and instead just protested the Department moving forward with the cell tower. That's really one of the critical facts here that I want to highlight. The Foundation had actual notice of the application deadline, they did not apply to bid on the cell tower site, and at no point prior to the January 10, 2020 deadline did they attempt to amend their existing application to include the cell tower site, that happened much later and we will discuss that in a few minutes. At the January 10th application deadline, there were three applicants to lease the cell tower site itself, none of them were the Foundation. Fast forward ten months and three weeks later on November 27, 2020, this was 6 days before the auction, and at that point the Foundation sent an email to Josh Purkiss stating that it wanted to amend its application for the 80 acres to include all 106 acres within the Buttercup parcel including the cell tower site, and that email indicated that it would increase its rental offer to \$250,000 per year. So it is questionable whether or not you can amend an application through that kind of email, but let's treat it as an amended application to lease the cell tower site itself. The only problem here is that it was sent 6 days before the auction deadline, nearly 11 months after the application deadline of January 10, 2020. One basis for rejecting their appeal is that, even if we treat their application as including the cell tower site, simply untimely. You can't file an application 6 days before an auction, you can't file an application 11 months after an application deadline. The Department has clear authority under the leasing rules to set deadlines for applications, so there's no question here that this was untimely. The Foundation has an alternative argument, which I will address now, and their argument is that all applications for the same quote unquote parcel – and here we're talking about the Buttercup parcel, the 106.6 acres – they argue that any application within that larger parcel is entitled to participate in the conflict auction for the cell tower site because even though they're for different parts of the same parcel, they interpret the rule to mean that any applications within the same larger parcel are in conflict.

Their argument would essentially require the Department to treat the application for one part of the parcel as an application for the entire parcel. There is nothing in the statutes and there is nothing in the leasing rules that really require that. The leasing rules require the applicant to provide a legal description of the specific lands that they wish to lease. Those specific lands are then made available by advertisement for conflict applications, which is what happened here. The advertisement for the cell tower lease was very clear that it was for a 0.23-acre site within the Buttercup parcel. So if someone applies to lease that same 0.23 acres, they are a conflict applicant. But if there's an application to lease a different portion within the parcel, the Department does not consider that a conflict. That is an important concept because most endowment parcels are 640 acres, a mile by mile section of land. If someone had a pending application to lease one-quarter of an acre in a 640-acre parcel, that does not mean that someone applying to lease a different quarter acre nearly a mile away but within that same parcel is in conflict. It's not an either-or proposition. Multiple applications can move forward for lands within a larger parcel. If the Board was to adopt the Foundation's arguments, that these two applications within the larger parcel are in conflict, then by law you could only award one of those leases. You can't award multiple leases in conflict if there is a conflict. I am giving you an extreme example by talking about the 640 acres, but the same principle applies to the Buttercup parcel; there is no support for the Foundation's interpretation that by applying for this land within the pink outline back in 2019 that they were in fact applying for the same parcel and that any other lease within the larger parcel would be in conflict. Again, the Foundation is an applicant for nearby lands and they're clearly unhappy with the cell tower and that unhappiness or dissatisfaction may cause them to withdraw their application, but, and this is critical, that is their choice. The Department is not depriving them of any rights. The Department by auctioning off the cell tower site does not take anything away from the Foundation; it is not depriving the Foundation of any property rights; it is not depriving the Foundation of its right to pursue the still pending lease application for those 80 acres. The Foundation has not been deprived of any rights; there is no basis for accepting the appeal. It's our recommendation that the Board reject it. Let's talk shortly about their alternative argument, about the Board violating its fiduciary duties if it does go forward with the cell tower lease knowing that the Foundation would then withdraw its application for the larger parcel. If that's true, and we don't know whether or not the Foundation will actually do that, the loss of potential endowment income does not deprive the Foundation of any rights, so again we're looking at whether or not the Foundation can pursue an appeal. They have to be injured. They're not injured by this alleged loss of endowment income. Our Supreme Court has said that only the endowment beneficiaries have standing to challenge financial decisions of the Board because they're the only parties that are injured. The Foundation can't claim to be injured or aggrieved by the alleged loss of endowment income. They are concerned about income not on grounds on which the Foundation can move forward on an appeal. Just to wrap this up...the Department followed its rules in identifying the two entities that qualified as conflict applicants for the cell tower site; it properly rejected as untimely the Foundation's last minute attempt to create a conflict by amending its application for the larger site. At the end of the day, all the Foundation is able to prove is that it is unhappy or dissatisfied with a cell tower being located near property that they wanted to lease, but unhappiness is not injury. Therefore, it is the Department's recommendation that the appeal be rejected, that the auction results for cell tower lease M700084 be accepted by the Board and the lease be awarded to Newmax LLC. That is all I had; I will be glad to stand for questions.

Attorney General Wasden: Steve, I also understand that in the process of the Foundation's amending its lease proposal, that there was a contingency attached to that – that if the auction occurred that they withdrew their application. Can you take me through that please?

Mr. Strack: That is correct. In their email to Josh Purkiss, again 6 days before the auction, they indicated that they would be willing to pay \$250,000 per year for the larger site, all 106 acres, but they would withdraw that offer if the cell tower lease moves forward. So it is a contingent...when you go back to the original lease application it was for \$2,500 per year. Two months later they upped that to \$25,000 per year. Six days before the auction they increased that to \$250,000 per year. There are no financials or anything attached that would support that offer so that's also another form of contingency.

Governor Little: Mr. Lawrence we've got a pretty limited time frame here, but I understand you're representing the appellant so if you can be brief, we'd appreciate it.

Mr. Dylan Lawrence: Okay, thank you Governor. Am I coming through okay?

Governor Little: Yes.

Mr. Lawrence: Okay. I represent the Tidwell Idaho Foundation who applied to lease a portion of this Buttercup parcel. And that Buttercup parcel, as we outlined in the briefing and we attached maps and all that, is made up of three distinct parcels of state-owned land. Our contention is that the Foundation had an application on file to lease a portion of one of those parcels of state-owned land and that under the wording of the Board's own leasing rules when it defines what a conflict application is, its basically three things: it's that you've got a use that's within the purview of the Board's leasing rules, and that you've got applications to lease the same parcel of land, and that's what the rule says. Typically when you use that word parcel, that's referring to a legal parcel of land. Our contention is that the Foundation's application was inherently a conflict application under the Board's own rules, and it should have gone through the process of developing the lease and lease terms. Under the rules that's what happens when it qualifies as a conflict application is that there are then additional procedures for developing lease terms and ultimately having a lease that everybody can look at and evaluate. But that didn't happen here. Some of Mr. Strack's argument is related to the fact that we have to piece a lot of this stuff together through emails and email chains and all of that, but I think that emphasizes the point that the record is a little messy because that process was never followed in terms of the Foundation's application. There's another piece that Mr. Strack didn't go into as much detail on, but in terms of the Foundation's application qualifying as a conflict application the other important point here is that fairly early on in the process, the Department's staff identified it as an application that's commercial in nature, and that's important because under the statutes a commercial application is out of the conflict auction procedure, out of the leasing rules, and it is treated more on an individual ad-hoc basis. We don't think that it really does qualify as a commercial application; we think the Department staff made that conclusion because there is a solar component to the application but really the solar component is ancillary to the single-family residential use that's proposed by the Foundation's application. We believe that it is a use that's within the purview of the Land Board's leasing rules. In terms of Mr. Strack's comments and the Department's arguments about standing, we've dealt with those pretty comprehensively in the written materials, but I think that the main take away on that point is the fact that we believe that the Foundation's application is a conflict application under the rules and so the rules itself

confer standing as an applicant to lease a portion of the same parcel of state-owned land. It's not a situation where there's an environmental organization who's opposing a lease because of some ancillary concern. The Foundation's application is an application to lease a portion of the same parcel of state-owned land that comprises that larger Buttercup parcel. Those are the high-level comments I wanted to make and I'm of course happy to stand for any questions. Governor, you referenced having limited time, I just want to say for the record that before the hearing the Foundation's president Ms. Tidwell asked me to inquire if she could have an opportunity to address anything I may have left out.

Governor Little: Ms. Tidwell, just briefly.

Ms. Kiki Tidwell: Thank you, Governor Little and Land Board. We're a small family foundation but we have had a mission of prevention of child abuse in Idaho for about 26 years, along with rural economic development through renewable energy. We have given quite a bit of funds over many years to those two purposes, and we have a real desire to demonstrate a renewable energy community where more affordable housing can be supplied by energy generated on site. We've spent considerable funds on attorneys to attempt to discern what Idaho Department of Lands wanted in an application. We've hired land surveyors and investigated current costs from a solar developer, a storage battery provider, from experienced subdivision developers, and we worked with engineers to model the septic and water requirements. I think several things happened at the same time when we came in with our application that created confusion in the Department. A new Land Board convened with a new Governor, the IDL Board had to revamp its leasing processes as required by an Idaho Supreme Court decision, the new leasing processes actually set all applicants back to starting over after the October 17, 2019 Land Board meeting. At the time that we were attempting to learn about how to lease from the Idaho Department of Lands, field staff such as Meribeth Lomkin were unsure of the new rules and were awaiting direction. There are emails where she is very unclear about what is happening at the main IDL offices. Both Lomkin and central staff office Josh Purkiss, however, did make an initial judgement and told us that it was classifying it as a commercial project applicant and that is not correct because it is a home site leases project and not commercial. We were going with the guidance that IDL staff was giving us. Lomkin, believing that new rules were being made for commercial leases felt that the Tidwell Idaho Foundation application was on hold. It seems like Lomkin did not know of the October 17th reset for leases and that all existing leases had to reapply. We were never told that we needed to reapply. We had a valid application with an application fee. Lomkin understood the Buttercup communication site applications to have been only delayed, or frozen from an earlier time period, not a complete reset. Therefore, she gave these applicants priority in an auction, when all applicants for the same parcel should have been an equal reset starting line with all conflicting uses allowed to bid; we relied on the direction from staff of how the application process worked and what it was supposed to do when. We believe that its application was actively being considered all these many months, and still believe that it has a valid application currently in with IDL along with its fee paid. Let me say that only our updated offer of the increased rent was withdrawn if the cell tower site went through. Our amended application was still on file. Staff did not tell us that we needed to supply additional financial performance when we amended any application, we weren't notified that an email amendment may not have been valid, we weren't notified of meetings when our application might be presented to the Board, and we were given no opportunity to attend to answer questions. IDL staff Josh Purkiss did not inform us of the existence of a recently completed appraisal on the parcels for five months. We

struggled to understand what IDL would consider as a good application and we needed this vital information of the appraisal. Staff never informed us that our application would not be moving forward. That is a falsehood presented to you. Staff did not follow IDL's procedures as outlined in the IDL application website. IDL should have advertised the prior James Miser's lease expiring as well as should have advertised a new proposed use of public lands once we submitted our first application. We believe that we are going to do a really good job in Blaine County to satisfy very vital needs of more affordable housing on smaller pad sites and very sustainable housing with energy that can be more resilient in the face of severe climate events; we're going to have backup power. We were never given directions of how we could bid for the parcel beyond being directed to look for an advertisement on a communications site. We believe that we could really do a good job on this parcel if given a chance to compete on bidding on the entire parcel. I thank you very much for considering our application.

Governor Little: Thank you, Ms. Tidwell. Further questions from Board members.

Attorney General Wasden: Unfortunately, I had some kind of a technological glitch when Mr. Lawrence was speaking, and I did not get to ask him a question. I wondered if he was still present and would yield to a question.

Governor Little: I believe he will, go ahead General.

Attorney General Wasden: Mr. Lawrence I am trying to figure out in the original application by the Foundation if it included the 0.23 acres for what is known as the cell site or the communications site?

Mr. Lawrence: Governor and Attorney General Wasden, honestly that might be a question better posed to Ms. Tidwell because she is more familiar with the ins and outs of the actual application.

Ms. Tidwell: I can answer that. Yes, it did. It included the blue outline of the entire parcel, our original application. Then we got feedback from Lomkin that we needed to exempt the existing radio tower, which is not the communications site but another site, and so we amended it to kind of maybe carve out that existing lease, but you know we've always been looking for direction from IDL about what we were supposed to be doing. It's very important that the entire parcel be seen as one piece because those house sites depend on the whole parcel vision. At various times we also went back to that larger blue outline with Josh Purkiss in various configurations. You can see I sent pieces like this that took it back in and asked him does this work for you, does this work for you? We were really trying to do something that worked for IDL and for our purposes but we did include it in the first application. Unfortunately, what I did is I amended the first application on top of the original one so there is two different printouts, but you know the amendment has the same date as the original application.

Attorney General Wasden: Kiki, you and I know each other; I will call you Kiki and you can call me Lawrence. So your original application, in your view, included it but then you removed that 0.23 acres at some point? Correct?

Ms. Tidwell: We were shifting around trying to see what IDL wanted from us. I knew that they wanted the original radio tower site out of there. So we kind of went with that. But the radio tower doesn't impact the whole property like a cell tower does.

Attorney General Wasden: Okay, but that 0.23 acres was then at some point excluded from your application, correct?

Ms. Tidwell: I am not really sure, because we never got anywhere, you know, with consideration.

Attorney General Wasden: Okay, alright.

Governor Little: Further discussion.

Attorney General Wasden: My question has been answered, Governor.

Governor Little: Mr. Strack do you have any brief, very brief, closing comments?

Mr. Strack: Thank you, Governor. I just want to reiterate that for purposes of the appeal, we are assuming that the Foundation's application remains on file and is active. We are assuming that it is subject to the same rules that apply to the cell tower lease. So all of this discussion about whether or not it was a commercial application really kind of falls away for purposes of the appeal. We are basically making all the assumptions in favor of the Foundation and still concluding that they don't have a basis, under the rules, for contesting the cell tower application. Thank you.

Board Action: A motion was made by Attorney General Wasden that the Tidwell Idaho Foundation's appeal be rejected and the results of the auction for lease M700084 be confirmed by the Land Board. Controller Woolf seconded the motion. Attorney General Wasden commented that based upon the entirety of this discussion this motion is proper, the Foundation did not timely submit a lease application regarding this 0.23 acres, and the Land Board should then confirm the results of the bid. The motion carried on a vote of 5-0.

5. Omnibus Rulemaking – Adoption of Temporary Fee Rules – *Presented by Scott Phillips, Policy and Communications Chief* – *Presented by Scott Phillips, Policy and Communications Chief*

Recommendation: Adopt as conditional temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2. The rules will become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is that the Land Board adopt as conditional temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2. The rules will become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

6. Negotiated Rulemaking IDAPA 20.03.09, Easements on State-Owned Submerged Lands and Formerly Submerged Lands – Presented by Mick Thomas, Division Administrator-Minerals, Public Trust, Oil and Gas – Presented by Mick Thomas, Division Administrator-Minerals, Public Trust, Oil and Gas

Recommendation: Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.09 Easements on State-Owned Submerged Lands and Formerly Submerged Lands.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is the Land Board authorize the Department to initiate negotiate rulemaking for IDAPA 20.03.09 Easements on State-Owned Submerged Lands and Formerly Submerged Lands. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

7. Negotiated Rulemaking IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act – Presented by Craig Foss, Division Administrator-Forestry and Fire

Recommendation: Authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act.

Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.02.01 Rules Pertaining to the Idaho Forest Practices Act. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Information

None

Executive Session

None

There being no further business before the Land Board, at 10:16 a.m. a motion to adjourn was made by Attorney General Wasden. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

